Supreme Court, U.S.
FILED

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No.

In the Supreme Court of the United States

ANNIE L. HERLING,

Petitioner,

v.

JOHN E. POTTER, POSTMASTER GENERAL,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

ANNIE L. HERLING
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Petitioner, *Pro Se*

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QUESTIONS PRESENTED

1. Whether the U.S. District Court and the Court of Appeals has properly interpreted and applied appropriate consideration to petitioner's medical records but not limited to her medical prognosis of a psychotic disorder in their decisions of December 10, 2002 and April 28, 2003?
2. Whether the Court rulings were based upon its merits?
3. Whether petitioner's medical records were necessary to establish and substantiate the Court's order of December 10, 2002, for summary judgment and the Court of Appeals decision of April 28, 2003?
4. Whether the U.S. District Court and the Court of Appeals violated Rule 35(a), (b) of the Federal Rules of Civil Procedure, for the purposes of evaluation and preparation of diagnosis and claims of petitioner's alleged injuries as contained in her complaint?
5. Whether the U.S. District Court and the Court of Appeals objected to petitioner's medical records and testimony?
6. Whether the Court failed to cross-examine petitioner's physical and mental state of mind?
7. Whether the U.S. District Court and the Court of Appeals deprived petitioners' constitutional rights of a proper, fair and just due process of the law as stated in the Articles of the Constitution of the United States?
8. Whether the U.S. District Court and the Court of Appeals object to Petitioner's medical evidence and all testimony presented through the discovery process?
9. Whether the U.S. District Court and the Court of Appeals decided on behalf of defendant's motion for

summary affirmance even though the abolishment of start time was not the only issue and claims under the consolidated complaint?

10. Whether the U.S. District Court and the Court of Appeals denial decisions were based upon a deposition transcript that was altered by Defendant's Attorney and Certified Shorthand Reporter?

11. Whether the U.S. District Court and the Court of Appeals omitted jurisdiction to hear/try petitioner's case in order to recover damages for personal injury, property, liberty and interest because of any deprivation and discrimination of any of her constitutional rights?

12. Whether the U.S. District Court and the Court of Appeals omitted the necessary main principles of summary judgment procedures?

13. Whether the U.S. District Court and the Court of Appeals omitted fact findings and failed to enforce discovery issues' requirements of due process for discovery?

14. Whether the U.S. District Court neglected to dispose petitioner's responses to defendant's motion for summary judgment in conjunction plaintiff's motion for judgment on the pleadings as required by Rule 56(e) and 12(c) of the Federal Rules of Civil Procedure?

15. Whether the U.S. District Court and the Court of Appeals failed to acknowledge that summary judgment should be denied if a fair minded person could draw more than one conclusion from the facts and must be clear beyond question?

16. Whether the U.S. District Court and the Court of Appeals omitted the fact that defendant's responses to petitioner's interrogatories were questionable?

17. Whether the U.S. District Court and the Court of Appeals failed to request from defendant's Attorney an authentic affidavit in support of a motion for summary judgment as to right to judgment?

18. Whether the U.S. District Court and the Court of Appeals considered the Federal Employer's Liability Act in their decisions?

19. Whether the U.S. District Court and the Court of Appeals granted and affirmed defendant's motion for summary judgment even when the USPS is intentionally liable of unlawful employment practices?

20. Whether the U.S. District Court and the Court of Appeals considered petitioners request of remand for the purpose of modifying the judgment for a trial by jury?

21. Whether the U.S. District Court and the Court of Appeals considered full monetary compensation based upon the Equal Employment Opportunity Commission (EEOC) and as demonstrated by petitioner?

22. Whether the U.S. District Court and the Court of Appeals considered USPS systematic patterns of frequent discrimination conduct and whether the conduct unreasonably interfered with petitioner's health, well-being and work performances?

23. Whether the U.S. Court of Appeals decision reflects the fact that Defendant's Attorney and the Court misrepresentations and misleading of the law and the legal process impeded the efficiency of the appeal process and outcome of this case?

24. Whether the U.S. District Court and the Court of Appeals decisions are relevant to a mixed case complaint and whether proper records were submitted to establish the facts and issues of this litigation?

25. Whether the U.S. District Court and the Court of Appeals were both bias in their denial decisions?

26. Whether the U.S. District Court humiliated petitioner in person and in writing and demeaned petitioner's person and character in order to manipulate the outcome of this litigation?

27. Whether the U.S. District Court and the Court of Appeals omitted the United States Postal Service violations of petitioner's privacy rights by allowing the whole world to enter/heaven, to make things up, participate, profit, crumble the stock market, substantially reduce the labor force, to go after certain individuals, promote themselves and others, sympathize, investigate, act, decide, advertise, write, vote, study, change, sell, buy, search, omit, prosper, teach, preach, dream, lead the nations, mislead, travel, execute, pray, wed on behalf of petitioner's ongoing oppression and depression, religious persecution and discrimination at the United States Postal Service?

28. Whether the U.S. District Court and the Court of Appeals omitted petitioner's biblical/spiritual, supernatural and physical interventions on behalf of United States Postal Service?

29. Whether the U.S. District Court entered an Executive Committee Order, which intentionally deprived petitioner rights and privileges secured by the laws of the United States under the Civil Rights Act, § 1983, providing equal rights under the Act of Congress?

30. Whether the U.S. District Court and the Court of appeals acted fairly in the disposition of this case concerning petitioner's best interest of fairness?

31. Whether the U.S. District Court and the Court of Appeals denial decisions are based upon petitioners' deposition transcripts, which disclosed the United

States Postal Service's fraudulent practices of hiding postmarked first-class mail inside of USPS trailers?

32. Whether the U.S. District Court and the Court of Appeals deliberately omitted EEO/U.S.P.S Investigator(s) case investigation findings in their decisions?

33. Whether the U.S. District Court and the Court of Appeals considered in their decision the fact that defendant produced no evidence or accurate answer in response?

34. Whether the U.S. District Court and the Court of Appeals found petitioner's case without any support in law or in fact?

35. Whether the U.S. District Court and the Court of Appeals found that the Executive Committee failed to grant petitioner indigent services under special circumstances which would have been available to a petitioner with financial means?

36. Whether the U.S. District Court and the Court of Appeals found that the Executive Committee violated petitioner's Constitutional rights, and religious rights in violation with the First Amendment?

37. Whether the U.S. District Court's denial decision for leave to amend and the Court of Appeals's denial of a trial by jury entitles plaintiff of a Certificate of Tax Exemption for violation of her Constitutional Rights and Privileges secured under the Constitution?

38. Whether the U.S. District Court and the Court of Appeals found petitioner entitled to full compensation as requested of $179 U.S. billion dollars?

39. Whether the U.S. District Court and the Court of Appeals abused its discretion by an affirmance decision?

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OPINIONS BELOW

The Court of Appeals's opinion was based upon 869 F.2d 356, 357 (7th Cir. 1989). The opinion of the district court was incorporated in the order denying petitioner's motion for leave to amend.

JURISDICTION

The judgment of the Court of Appeals was entered on April 28, 2003 and a timely petition for rehearing was denied on April 28, 2003. A copy of the order denying rehearing appears at Appendix B. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause of the Constitution provides in relevant part. "[T]he Laws of the United States * * * shall be the supreme Law of the Land * * * any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. CONST. art. VI, cl.2. This case involves the requirements of due process under the Amendments 1, 7, 9 and 14, United States Constitution. In addition, *See* Title 28, § 1339.

STATEMENT

This case raises important and recurring questions relating to the scope and purpose of rules that govern the procedure of the United States District Court and the Court of Appeals. *See* Fed. Rules Civ. Proc. Rule 59. *See also Menominee Tribe v. United States*, 391 U.S. 404, 407 (1968).

The first conflict, which the United States District Court of the Northern District of Illinois, Eastern Division failed to recognize concerns of Amendments 1, 7, 9, and 14 of the Constitution of the United States, which provides liberty, jury trial, certain rights not listed in the Constitution and the due process and equal protection of the laws. This practice and procedure was deliberately omitted and violated by the U.S. District Court and the Court of Appeals. *See Kosydar v. National Cash Register Co.*, 417 U.S. 62, 65 (1974); U.S. Constitution, art. 14, cl.1.

The second conflict concerns fundamental medical questions raised of legal, nonfrivolous claims but not settled by the U.S. District Court and the Court of Appeals in direct violation with Rule 35(a), (b) of the Federal Rules of Civil Procedure. *See Duvall v. Laidlaw,* 141 Ill App 3rd 717, 490 N.E.2d 1004, 95 Ill. Dec. 912 (4th Dist. 1986). *See* also *Tucker v. Dickey*, 613 F. Supp. 1124 (1985, WD Wis.).

The third conflict relates to Postal Matters (Title 28 § 1339). The U.S. District Court and the Court of Appeals omitted deposition transcripts of factual testimony relating to the United States Postal Service fraudulent service practices of deliberately hiding first-class mail inside trailers. I can support what I say with the divine requirement of two or three witnesses. *See* Holy Bible, 1 Timothy 5:19. KJV.

Fourth, I am willing to make the statement in the presence of the person I accuse, giving them an opportunity to defend himself or herself. *See* Holy Bible, Matthew 18:15-17; Acts 24:19. KJV.

A. The United States District Court Decision

The U.S. District Court ruling is outside the scope of the Rule and nor does it state that it is in conformity to Rule

35(a), (b), of the Fed. R. Civ. P., which states that the court may order a physical or mental examination by a suitable or licensed examiner on the grounds that plaintiff put her physical and mental medical condition in issue through her claims contained in her complaint and documents filed in this case and petitioner needs an independent medical examination and opinion for the purpose of evaluating plaintiff's claims and preparing of a medical diagnosis and evaluation of plaintiff's alleged injuries and claims.

The U.S. District Court omitted petitioner's involuntary admission to representation of counsel. Because of petitioner's physical and supernatural confrontation against evil forces on behalf of the United States Postal Service, she was not able to move and perform in accordance to the needs of her complaint as stated. Refer to the Holy Bible, Ephesians 6:12, KJV.

The U.S. District Court omitted jurisdiction of petitioner's stated claims in her deposition transcripts related to the USPS service of fraudulent practices of hiding first-class mail inside of USPS trailers as a matter of reason for discrimination. *See* Title 28 § 1339.

B. The Court of Appeals' Decision

The Court of Appeals after carefully reviewing the final order of the district court and the record on appeal determined that no member of the panel desires briefing because it would be a waste of time. In support thereof, the court cited *Mather v. Vill. of Mundelein*, 869 F. 2d 356, 357 (7th Cir. 1989) (per curiam) (court can decide on motion papers and record where briefing would be a waste of time and no member of the panel desires briefing). *See Mather v. Vill. of Mundelein*, 869 F. 2d 356, 357 (7th Cir. 1989).

The Court of Appeals conflicts its decision because it exempts the lower court ruling from express and implied

preemption of all requirements imposed through the laws of general applicability. *See* Fed. R. Civ. P. 1.

Moreover, it was erroneous and inappropriate for the Court of Appeals to affirm the District Court's decision because the Court deliberately failed to consider among other things the fact that the plaintiff was proceeding involuntary *pro se*; the Court failed to resolve genuine issues of disputed fact; the Court applied erroneous legal conclusions; the Court did not provide a statement explaining the affirmance based upon plaintiff's medical prognosis; plaintiff did not have the benefit of certain fundamental procedural protections and an opportunity but not limited to appointing an attorney for refining those alleged deficiencies so as to avoid affirmance. *See Wilson v. Rackmill*, 878 F.2d 772 (1989, CA3 Pa.). Also *see* Fed. R. Civ. P. 59(a)(2).

REASONS FOR GRANTING THE PETITION

I. THE LOWER COURT DEPARTED FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS

The U.S. Court of Appeals deliberately departed from the accepted and usual course of judicial proceedings and those deviations from normal appellate practice is imperative public importance and require immediate determination in this Court. *See* 28 U.S.C. § 1254(1).

A. This Case Presents the Conflict

The reason for this request is that the constitutional issues involved are so complex and of such great public importance that cannot be confined to the normal of the lower courts decisions. *See infra*, pp. 1929-33.

Review of this case would allow the Court to resolve widespread uncertainty over petitioner's case. Indeed, only

this Court can bring clarity to the significant area of federal law because additional litigation in the lower courts is most unlikely to lead to further clarity. *See* 390 U.S. 459 (1968).

B. The Issue Presented by the Conflict Is Recurring and of Great Practical Importance

The United States Postal Service fraudulent customer services and illegal employment practices are concealed and the fabrication of evidence creates conflicts and extends to other important and recurring issues of law and facts of the federal law requirements and applicability of great practical importance. *See* Title 28 § 1339.

The conflict in the United States District Court and the Court of Appeals is particularly significant because the origin of the litigation proceeding has already been applied and the appeal decision undermines a broad range of federal regulatory procedures and this is of critical importance.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted because this case presents important questions referring to the accommodation of state and federal interests under the Constitution of the United States.

Respectfully submitted,

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Petitioner, *Pro Se*

Dated: December 12, 2003

APPENDICES

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Case Number: 00 C 4710 Date: January 29, 2003

Assigned Judge Joan B. Gottschall

Case Title: Annie Herling vs. John Potter, Postmaster General

* * * *

DOCKET ENTRY:

* * * *

(10) ☒ [Other docket entry]
Plaintiff's amended motion to reconsider the Court's order of 12/10/02 for summary judgment is denied.

* * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Case Number: 00 C 4710 Date: January 22, 2003

Assigned Judge Joan B. Gottschall

Case Title: Annie Herling vs. John Potter, Postmaster General

* * * *

DOCKET ENTRY:

* * * *

(10) ☒ [Other docket entry]
Plaintiff's motion to reconsider the court's order of 12/10/02 for summary judgment is denied.

* * * *

App. 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Case Number: 00 C 4710 Date: December 10, 2002

Assigned Judge Joan B. Gottschall

Case Title: Annie Herling vs. John Potter, Postmaster General

* * * *

DOCKET ENTRY:

* * * *

(10) ☒ [Other docket entry]
Enter Order. Plaintiff's motion for leave to file second amended complaint [40-1] is denied. Defendant's motion for summary judgment [37-1] is granted. Case terminated.

(11) ☒ [For further detail see order attached to the original minute order]

* * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANNIE L. HERLING,	)	
	)	
Plaintiff,	)	
	)	Case No. 00 C 4710
	)	
WILLIAM HENDERSON, POSTMASTER GENERAL) and U.S. POSTAL SERVICE,	)	Judge **Joan B. Gottschall**
	)	
	)	
Defendants.)		

ORDER

Presently pending are plaintiff's motion for leave to amend and defendant's motion for summary judgment. For the reasons set forth below, the former is denied and the latter is granted.

I. Background

Plaintiff Annie Herling, a Hispanic woman, filed this *pro se* suit against her employers, Postmaster General John Potter and the United States Postal Service ("USPS"). Her original complaint was dismissed *sua sponte* for failure to set forth any allegations that could possibly support a claim. In her amended complaint, Herling alleged that defendants discriminated against her by creating an ethnically hostile work environment, retaliated against her for filing EEOC claims, and discriminated against her because of her religion. In an order of July 16, 2001, this

court dismissed the USPS as a defendant and dismissed two of Herling's three claims, leaving only the retaliation claim against Potter. Herling's religious discrimination claim was dismissed because nothing she submitted in the case supported any element of a *prima facie* religious discrimination claim. (Order of 7/16/01.) Her hostile work environment claim was dismissed on similar grounds: Herling "utterly failed to allege any facts, such as comments or conduct by others, that could support an allegation that she was subjected to an abusive working environment based on her ethnicity." *Id.*

Just four days after the dismissal of her hostile work environment and religious discrimination claims, Herling moved for leave to file a second amended complaint. On August 2, 2001, the court denied that motion without prejudice and ordered discovery closed by January 4, 2002. On January 31, 2002, Potter announced his intention to move for summary judgment and the court mailed copies of Federal Rule of Civil Procedure 56 and Northern District of Illinois Local Rule 56.1 to plaintiff. On March 1, 2002, Herling once again filed for leave to file a second amended complaint. That motion was denied on March 6 because Herling failed to present the motion as required by Local Rule 5.3(b).

On March 11, 2002, Potter filed his motion for summary judgment and mailed to Herling a copy of Local Rule 56.1 and a statement regarding the consequences of failing to respond to the summary judgment motion. On March 13, Herling moved (for the third time) for leave to file a second amended complaint. On March 20, that motion was denied and the parties were instructed to proceed with summary judgment briefing. On April 3, Herling once again moved for leave to file a second amended complaint and Porter was instructed to file an answer brief. Both motions are now fully briefed.

II. Analysis

As a preliminary matter, it is important to observe that Herling has proceeded *pro se* throughout the entire course of this litigation. "Allegations of the *pro se* complaint [are held] to less stringent standards than formal pleadings drafted by lawyers. Accordingly, *pro se* complaints are to be liberally construed." *Antonelli v. Sheahan,* 81 F.3d 1422, 1427 (7th Cir. 1996) (internal quotation marks and citations omitted). Furthermore, the court will review all the materials submitted by Herling in this case, not just the complaint, when making its decision. *Swofford v. Mandrell,* 969 F.2d 547, 549 (7th Cir. 1992).

A. Leave to Amend

Before discussing whether the summary judgment is proper, the court will first decide whether Herling will be allowed to amend her complaint. Discovery in this case closed nearly three months before Herling filed her proposed second amended complaint. The proposed complaint contains new factual allegations and would require significant additional discovery. Allowing the amendment would unduly prejudice Potter, so leave to amend is denied.

Herling seeks leave to file a second amended complaint because "the original and amended complaint did not give notice to the nature and basis of all mixed case claims asserted under this litigation." (Pl's Mot. at 4.) She claims that she failed to file the original and amended complaints as "mixed case" complaints. It is unclear exactly what Herling means by this term. Her first amended complaint did allege religious discrimination and discrimination based on a hostile work environment, in addition to the retaliation claim that survived defendant's motion to dismiss. In the second amended complaint, Herling seeks to add new claims for race discrimination, national origin discrimina-

tion, and harassment, in addition, to reasserting her previously dismissed religious discrimination and hostile work environment claims.

The Federal Rules provide that leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). "In the absence of any apparent or declared reason-such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc.-the leave sought should, as the rules require, be "freely given." *Foman v. Davis,* 371 U.S. 178, 182, (1962). The decision whether to grant leave to amend is within the discretion of the district court. *Id.*

Undue prejudice can exist when it appears likely that allowing the amendment, after the defendant has moved for summary judgment, would force the defendant to engage in significant additional discovery. *Johnson v. Methodist Med. Ctr.,* 10 F.3d 1300, 1304 (7th Cir. 1993). Although in general leave to amend should be freely given, "[t]here must be a point at which a plaintiff makes a commitment to the theory of its case." *Id.* In *Johnson,* plaintiff faced a summary judgment motion and sought to amend her initial complaint to add allegations and parties not originally named. *Id. At* 1302-03. The court upheld the district court's denial of her motion for leave to amend, reasoning that because of the additional discovery burden and the fact that plaintiff could not provide a sufficient reason for her failure to include the new allegations in her original complaint, allowing the proposed amendment would unfairly prejudice the defendant. *Id.* at 1304.

Although a certain amount of leeway should be given to Herling because of her *pro se* status, she fails to state any legitimate reason why the facts included in the proposed second amended complaint were not contained in earlier

complaints or why she failed to file this motion until three months after the close of discovery. While it is true that Herling asked for leave to file an amended complaint as early as July 20, 2001, all previous motions failed to set out the facts alleged in her most recent motion. The explanation she provides for the delay is defendant's "misrepresentation and omission of significant material facts that seriously impedes the efficient litigation of this case." (Pl.'s Answer to Def.'s Resp. to Mot. to File Second Am. Compl. at 2.) Yet it is unclear which facts she references, or how the facts affected her ability to file an amendment in a timely manner.

All of the new facts pleaded in the proposed complaint were within Herling's knowledge and under her control at the time she filed her first amended complaint. Herling fails to explain why she did not have earlier knowledge of certain facts allegedly uncovered during discovery. The allegations reported in her second amended complaint are statements made to her by postal employees or made in her presence, which she could have included in her original complaint. Any misrepresentation on the part of the defendant could not have reasonably affected her ability to do so.

Additionally, if Herling is allowed to amend, the burden placed on the Potter will be significant. In this respect the present facts mirror those in *Johnson,* and undue prejudice exists for the same reasons it did there. See *Johnson,* 10 F.3d at 1304. As a result of this court's dismissal of Herling's hostile work environment and religious discrimination claims, the case was focused narrowly on the claim that a schedule change was retaliatory and discovery proceeded on that claim alone. If the proposed amendment is allowed, the government would have to engage in significant additional discovery. Herling's proposed complaint contains approximately thirty pages of allegations, almost all of which a re being raised for the first time in

this case, and names of at least twenty-five new people. (Pl.'s Mot. for Leave to File Second Am. Compl. at 2-31.) In order to properly defend himself, Potter would need to interview these additional people and conduct investigations into the new allegations. Requiring him to do so after he has already filed a dispositive motion would be unduly prejudicial.

Because Herling fails to state a reasonable justification for the delay, and reopening discovery would be prejudicial to the defendant at such a late stage of the proceeding, the motion is denied. Defendant's motion for judgment on the retaliatory discrimination claim will therefore be considered.

B. Summary Judgment

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In ruling on a motion for summary judgment, the court evaluates the admissible evidence in the light most favorable to the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U. S. 242, 255 (1986). However, the party that bears the burden of proof on an issue may not rest on the pleadings, but must affirmatively demonstrate that there is a genuine issue of material fact that requires trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). To do so, the nonmovant must support her contentions not just with allegations and conclusory statements, but rather with proper documentary evidence. *Id.* at 324.

A plaintiff pursuing a Title VII retaliation claim has "two (and only two) distinct routes to obtaining/preventing summary judgment." *Stone v. City of Indianapolis Pub.*

Utils. Div., 281 F.3d 640, 644 (7th Cir.), *cert. denied*, 123 S. Ct. 79 (2002). The first method is for the plaintiff to present direct evidence that she engaged in a protected activity and as a result suffered an adverse employment action. If this evidence in uncontradicted, plaintiff will be entitled to summary judgment in her favor. However, if the defendant can present unrebutted evidence that it would have taken the adverse action even if there had been no retaliatory motive, it will be entitled to summary judgment. *Id.*

The Seventh Circuit has used different standards to determine what constitutes direct evidence. See *Sanghvi v. St. Catherine's Hosp.*, 258 F.3d 570, 574 (7th Cir. 2001), cert. denied, 122 S. Ct. 923 (2002). Sometimes the court has applied a strict standard, holding that, "direct evidence essentially requires an admission by the decision-maker that his actions were based on the prohibited animus." *Id.* (quoting *Radue v. Kimberly-Clark Corp.*, 219 F.3d 612, 616 (7th Cic. 2000)). Other times the court has used a broader definition, finding that, "[r]emarks and other evidence that reflect a propensity by the decisionmaker to evaluate employees based on illegal criteria will suffice as direct evidence of discrimination even of the evidence stops short of virtual admission of illegality." *Id.* (quoting *Walker v. Glickman*, 241 F.3d 884, 888 (th Cir. 2001)).

The second route to obtaining/preventing summary judgment is an adaptation of the traditional *McDonnell Douglas* approach to the retaliation context. Under this route, a plaintiff must show that after filing a charge "only he, and not any similarly situated employee who did not file a charge, was subjected to an adverse employment action even though he was performing his job in a satisfactory manner." *Stone*, 281 F. 3d at 644. Again, if the defendant produces no evidence in response, the plaintiff is entitled to summary judgment. However, if the defendant presents "unrebutted evidence of a noninvidious reason for the

adverse action," then it will be entitled to summary judgment. *Id.*

In the present case, Herling presented no direct evidence, under either the strict or broad definition, that she suffered an adverse employment action as a result of her filing multiple EEOC complaints. Consequently, her only chance for success is the second route, the indirect evidence approach. *Id.* Herling claims that, in retaliation for her filing multiple EEOC complaints, the defendant in April 1997 eliminated her start time of 8:30 p. m. and required her to begin work at 11:00 p.m. This affected her ability to earn overtime pay and this constituted an adverse employment action.

Herling's claim fails for a number of reasons. First, it is uncontested that on March 25, 1997, the Post Office, through a series of letters, changed the start time of not just the plaintiff but rather of all eighteen distribution clerks with start times between 8:00 and 10:00 p.m. (Pl.'s Resp. to Def.'s Mot. for Summ. J. at 54.) Of the eighteen clerks, only four had previously filed EEOC charges. (Def.'s Rule 56.1 Stmt. § 7.) (Herling is simply wrong when she asserts that this fact is irrelevant. (Pl.'s Resp. to Def.'s Mot. for Summ. J. at 54). Herling therefore fails to meet the first requirement of a retaliation claim based on indirect evidence-that only she, and not any similarly situated employee who did not file a charge, was subject to the adverse action.

Second, even assuming that Herling met her initial burden of establishing a *prima facie* case of retaliatory discrimination, she has failed to rebut the evidence presented by the defendant that the decision to change the start time for the eighteen clerk was made for legitimate business reasons. A letter dated February 24, 1997, from Manager of Distribution Operations Michael Ray Lee to Josephine McClellan, Senior Personnel Services Specialist,

requests that the early start times be abolished and reposted to 11:00 p. m. in order to help Tour 1 meet its commitments. (Def.'s 56.1 Stmt. § 6 & Ex. B.) The letter goes on to explain that, as a result of Tour 1's failure to meet its commitment, the Post Office was forced to pay overtime to additional employees and that eliminating the early start times would alleviate that problem. The affidavits of both Lee and McClellan support the assertions in the letter. Saving money is obviously a legitimate goal.

By presenting this evidence, Potter effectively shifted the burden back to Herling to rebut the government's proffered reason for the making the change. Herling responds in a number of ways, none of which is sufficient to counter the evidence provided by Potter. She claims that the Lee and McClellan affidavits are deficient because they lack express statements declaring the affiants' competence to testify at trial. (Pl.'s Resp. to Def.'s Mot. for Summ. J. at 2.) There is no general rule requiring such a declaration. Rule 56(e) provides that affidavits "shall show affirmatively that the affiant is competent to testify to the matters stated therein," but that requirement is satisfied here. Each affidavit is manifestly based on personal knowledge. Herling also claims that the decision to eliminate her start time was not made to improve efficiency, but rather was made to retaliate against her. However, she fails to provide any evidence in support of this claim. She simply states that Mr. Lee, after moving the start time on April 1997, later "accommodated" new employees and employed part-time regular employees. (*Id.* at 55.) It is unclear how this supports her position.

More fundamentally, Herling fails to present sworn affidavits or any other evidentiary material in support of her arguments. She denies facts listed in the defendant's statement of material facts, but fails to present evidence beyond her own conclusory, unsworn statements in support of her denials. See Fed. R. Civ. P. 56(e) ("When a motion for

summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleadings but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial."). Herling acknowledges this fact in her response to the summary judgment motion, stating that she "is unable to present evidentiary affidavits and counteraffidavits facts essential to justify its opposition due to that plaintiff's personal friends are getting attacks which includes the burglarizing of their homes, vandalizing their automobiles and to the extent of raping plaintiff's daughter." (*Id.* at 47.) Similarly, in her deposition, Herling stated that she would not give names of corroborating witnesses, but would call them should the case proceed to trial. (Def.'s Rule 56.1 Stmt. Exh. A, at 54-56.) This explanation is insufficient. See Fed. R. Civ. P. 56(f) ("Should it appear *from the affidavits* of a party opposing the motion that the party cannot for reasons stated by *affidavit* facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be held or may make such other order as is just.") (emphasis added). Even if the court accepts Herling's unsworn statements as true, she fails to explain how the threat to her putative witnesses would be at all diminished at trial. Neither does Herling describe what she believes her witnesses would say. Her vague allegations are insufficient to support a continuance, let alone the more radical step of skipping discovery altogether and going directly to trial. *See United States v. Bob Stofer Oldsmobile Cadillac, Inc.*, 766 F.2d 1147, 1153 (7th Cir. 1985) ("A party who has been dilatory in discovery may not use Rule 56(f) to gain a continuance where he has only made vague assertions that further discovery would develop genuine issues of material

fact."); *see also Simplex, Inc. v. Diversified Energy Sys., Inc.*, 847 F 2d 1280, 1292 (7th Cir. 1988) ("Our rules of civil procedure are designed to facilitate the complete disclosure of all relevant information before trial in order to eliminate unfair surprise and ultimately promote accurate and just decisions.").

Finally, Herling argues that Potter's motion for summary judgment must not be granted because opposing counsel failed to inform her of the purpose of summary judgment and the steps that she needed to take in response. (Pl.'s Resp. to Def.'s Mot. for Summ. J. at 2.) Herling is correct that all *pro se* litigants are entitled to notice of the consequences of failing to respond to a summary judgment motion- *Timms v.Frank*, 953 F.2d. 281, 285 (7th Cir. 1992). This notice should include both the text of Rule 56(e) and a statement in ordinary English explaining what type of response is required. *Id.* Although Herling contends she failed to receive such notice, the evidence in the record clearly indicates otherwise. In its motion for summary judgment, the government indicated that the required notice was served on the plaintiff by way of United States Mail. Additionally, this court provided Herling with the same set of instructions by way of a Minute Order dated January 31, 2002. Herling's contention that she was not properly informed is unfounded.

For all of the foregoing reasons, Potter's motion for summary judgment is granted.

ENTER:

/s/ JOAN B. GOTTSCHALL
United States District Judge

DATED: December 10, 2002

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Case Number: 00 C 4710 Date: April 26, 2002

Assigned Judge Joan B. Gottschall

Case Title: Annie Herling vs. John Potter, Postmaster General

* * * *

DOCKET ENTRY:

* * * *

(10) ☒ [Other docket entry]
Emergency motion by Plaintiff for an extension of time to file response to defendant's motion for summary judgment by 5/7/02 is granted. Government's reply is due by 5/21/02.

* * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Case Number: 00 C 4710 Date: April 3, 2002

Assigned Judge Joan B. Gottschall

Case Title: Annie Herling vs. John Potter, Postmaster General

* * * *

DOCKET ENTRY:

* * * *

(1) ☒ Filed motion of [use listing in "Motion" box above.]

(3) ☒ Answer brief to motion due 4/24/2002. Reply to answer brief due 5/15/2002.

(4) ☒ Ruling on Motions will be by mail.

(10) ☒ [Other docket entry]
Motion by Plaintiff to strike Defendant's motion for summary judgment is denied. Oral motion by Plaintiff for extension of time to file response to Defendant's motion for summary judgment by 4/20/02 is granted. Government's response by 5/14/02.

* * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Case Number: 00 C 4710 Date: March 20, 2002

Assigned Judge Joan B. Gottschall

Case Title: Annie Herling vs. John Potter, Postmaster General

* * * *

DOCKET ENTRY:

* * * *

(10) ☒ [Other docket entry]
Motion by Plaintiff for leave to file second amended complaint is denied without prejudice for the reasons stated in open court. Briefing as to pending motion for summary judgment to proceed.

* * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Case Number: 00 C 4710 Date: March 11, 2002

Assigned Judge Joan B. Gottschall

Case Title: Annie Herling vs. John Potter, Postmaster General

* * * *

DOCKET ENTRY:

* * * *

(10) ☒ [Other docket entry]
Defendant's motion to file motion for summary judgment instanter is granted.

* * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Case Number: 00 C 4710 Date: March 6, 2002

Assigned Judge Joan B. Gottschall

Case Title: Annie Herling vs. John Potter, Postmaster General

* * * *

DOCKET ENTRY:

* * * *

(10) ☒ [Other docket entry]

Motion by Plaintiff to file second amended complaint is denied without prejudice for failure to comply with Local Rule 5.3(b), which requires that "[e]very motion shall be accompanied by a notice of presentment specifying the date and time on which, and judge before whom, the motion is to be presented." Plaintiff has failed to present such notice.

* * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Case Number: 00 C 4710 Date: January 31, 2002

Assigned Judge Joan B. Gottschall

Case Title: Annie Herling vs. John Potter, Postmaster General

* * * *

DOCKET ENTRY:

* * * *

(10) ☒ [Other docket entry]
Defendant to file motion for summary judgment by 3/8/02. Response by 4/8/02. Reply by 4/22/02. The Court will rule by mail. The Court gives Rule 56 cautionary instructions. The Clerk is directed to send Plaintiff a copy of Fed.R.Civ.P.56 and Local Rule 56.1.

(11) ☒ [For further details see order on the reverse side of the original minute order.

* * * *

ORDER

Because the defendant has moved for summary judgment, the court, as required by *Lewis v. Faulkner*, 689 F.2d 100 (7th Cir. 1982), directs plaintiff's attention to the requirements of Rule 56(e) of the Federal Rules of Civil Procedure. Under Rule 56(e), a plaintiff may not rely on the mere

allegations of the complaint to oppose a motion for summary judgment. Instead, he must respond to the motion with sworn affidavits, or other evidentiary material, setting forth **specific facts** showing that there is a genuine issue for trial. If plaintiff fails to so respond; then the facts declared in the defendant's sworn affidavits or other evidentiary material submitted in support of motion for summary judgment will be deemed true and, if applicable law allows, judgment shall be granted in favor of the moving defendant.

In addition, plaintiff must file a statement as required by General Rule 56.1 of this Court. The statement essentially a response to the statement of facts presented in defendant's motion. Plaintiff's statement should respond to each numbered paragraph in defendant's statement, agreeing with or denying the facts as set out. If plaintiff disagrees with any facts set forth in defendant's statement, he should specifically so state and indicate what evidence in the record supports his version of the facts. His disagreement may not take the form of legal arguments, which belong in plaintiff's response brief. Plaintiff's statement under Rule 56.1 must be limited to factual disputes. If plaintiff does not dispute the facts stated by defendant, the court will accept them as true. Plaintiff's statement should also include short numbered paragraphs setting out any additional material facts that plaintiff believes will require litigation to determine.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Case Number: 00 C 4710 Date: December 12, 2001

Assigned Judge Joan B. Gottschall

Case Title: Annie Herling vs. John Potter,
Postmaster General

* * * *

DOCKET ENTRY:

* * * *

(5) ☒ Status hearing is set for 12/21/2001 at 9:30 am.

(10) ☒ [Other docket entry]

Defendant's motion to compel responses to interrogatories and document requests and for 26(A)(1) disclosures is granted. Plaintiff is ordered to respond to discovery and serve Rule 26(a)(1) disclosures no later than 12/18/01. Plaintiff's failure to comply with this order will result in dismissal of this case for want of prosecution.

* * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Case Number: 00 C 4710 Date: August 2, 2001

Assigned Judge Joan B. Gottschall

Case Title: Annie Herling vs. John Potter, Postmaster General

* * * *

DOCKET ENTRY:

* * * *

(5) ☒ Status hearing held and continued to 11/7/2001 at 9:30 am.

(10) ☒ [Other docket entry]

Motion by Plaintiff for leave to file second amended complaint (23-1) is denied without prejudice. Oral motion by Plaintiff for extension of time to obtain counsel to represent her by 9/4/01 is granted. Discovery is ordered closed 1/4/02.

* * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Case Number: 00 C 4710 Date: July 16, 2001

Assigned Judge Joan B. Gottschall

Case Title: Annie Herling vs. John Potter, Postmaster General

* * * *

DOCKET ENTRY:

* * * *

(5) ☒ Status hearing is set for 8/2/01 at 9:30am.

(10) ☒ [Other docket entry]

Enter Order. Motion by defendant to dismiss amended complaint [16] is granted in part and denied in part. Motion by plaintiff for appointment of counsel [15] is denied. USPS is dismissed from this suit as an improper defendant.

(11) ☒ [For further detail see order attached to the original minute order]

* * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANNIE L. HERLING,	)	
	)	
Plaintiff,	)	
	)	Case No. 00 C 4710
	)	
WILLIAM HENDERSON, POSTMASTER GENERAL) and U.S. POSTAL SERVICE,	)	Judge **Joan B. Gottschall**
	)	
	)	
Defendants.)		

ORDER

Plaintiff Annie Herling, a Hispanic female, has filed suit against the Postmaster General of the United States and the United States Postal Service ("USPS"). She alleges that the USPS, her employer, discriminated against her based on her religion; that a hostile working environment existed for Hispanics; and that the USPS retaliated against her for filing claims with the EEOC. Defendants have moved to dismiss all claims, while Herling has moved for appointment of counsel. For the reasons set forth below, defendant's motion is granted in part and denied in part. Herling's motion is denied.

Background

On August 3, 2000, Herling, a distribution clerk at the USPS, filed twenty identical lawsuits in this court. After concluding that "Ms. Herling has moved from being a litigant who is simply frivolous to being one who is vexa-

tious," the Executive Committee of the District Court terminated nineteen of the lawsuits but left the current suit open. See Minute Order of August 17, 2000. In denying without prejudice Herling's initial motions for leave to proceed in forma pauperis ("IFP") and for appointment of counsel, the court stated that Herling's original complaint failed to contain a description of Herling's claim. Herling then filed an amended complaint, another motion for appointment of counsel, and another petition to proceed IFP. The last of these motions was granted, while the other two are at issue in this opinion.

The amended complaint contains very little in the way of substance regarding Herling's claims. Paragraph 1 claims that Herling filed an Equal Employment Opportunity ("EEO") precomplaint for counseling in February, 1998 based upon retaliation discrimination, religious discrimination, and a hostile work environment against Hispanics. Paragraph 1 also refers the reader to the original complaint and the precomplaint for counseling, presumably, for more details regarding the claims. Paragraph 4 claims that in April 1997, the purported manager of distribution operations, Michael Lee, engaged in the: "unlawful retaliatory systematic abolishment" of Herling's starting time position." (Am. Compl. § 4.) The rest of the amended complaint alleges violations by the USPS of its own rules and describes Herling's request for appointed counsel and the nature of the relief she seeks.

Analysis

As a preliminary matter, it is important to note that Herling is not represented by counsel. Therefore, the "relaxed and informal" pleading standards of the Federal Rules will be interpreted "ultraliberally" when deciding whether Herling has asserted valid claims against defendants. *Murrey v. United States*, 73 F.3d 1448, 1452 (7th Cir.

1996). Furthermore, the court will be permitted to review *all* the materials that Herling has submitted in this case, not just the complaint, when deciding defendant's motion to dismiss. *Swofford v. Mandrell*, 969 F. 2d 547, 549 (7th Cir. 1992).

Religious Discrimination

Herling's complaint alleges religious discrimination by defendants. In order to state a claim of religious discrimination in the workplace, a plaintiff needs to allege that (1) she has a bona fide religious belief that conflicts with an employment requirement; (2) she has informed her employer of her religious belief; and (3) she was disciplined, discharged, or otherwise damaged as a result of her assertion of the conflicting religious belief. *Silk v. City of Chicago*, 1996 WL 312074, at *21 (N.D.Ill. June 7, 1996). Defendants argue that Herling has failed to allege any element of such a claim. Herling's response does not address defendant's argument. Defendants are correct. None of the materials Herling has filed in this case support any element of a religious discrimination claim. The only allegation that Herling has made regarding her religion is that she is a "righteous Christian," (Exh. G to Herling's Mot. to Rencos. Denial of Appoint. of Counsel and Leave to File IFP ("Mot to Recons.") at § 12), but nothing further is asserted regarding how her religion conflicts with her work requirements. Defendant's motion to dismiss this claim is granted.

Hostile Work Environment

Herling alleges that she suffered a hostile work environment against Hispanics. In order to state a claim for hostile work environment, a plaintiff needs to allege harassment that is sufficiently "severe or pervasive to alter the terms or

conditions of employment." *Sanders v. City of Chicago*, 2000 WL 198901, at *4 (N.D.Ill. Feb. 15, 2000) (citations omitted). "In other words, a hostile or abusive work environment consists of 'discriminatory intimidation, ridicule and insult' in the workplace." Id. at *4 (citations omitted). Defendants argue that Herling has failed to make any allegations amounting to a claim for a hostile work environment. Again, Herling fails to respond to this argument. And again, defendants are correct. Though Herling makes the conclusory allegation that she suffered harassment because she was Hispanic, she has utterly failed to allege any facts, such as comments or conduct by others, that could support an allegation that she was subjected to an abusive working environment based on her ethnicity. Mere conclusory allegations, unsupported by any facts, cannot withstand a motion to dismiss. *Cerns v. Village of Orland Park*, 1999 WL 756155, at *2 (N.D.Ill. Sept. 13, 1999); see *Kyle v. Morton H.S.*, 144 F.3d 448, 455-56 (7th Cir. 1998). Defendant's motion to dismiss the hostile work environment claim is granted.

Retaliation Claim

Herling alleges in her precomplaint for counseling that she was retaliated against for filing EEO charges in Case Nos. 1-J-6030040-97 and 1-J-603-0017-97. The files do not indicate what those cases are about. However, Herling's Appeal of the USPS's Final Agency Decision on the EEO complaint in this case sheds more light on the matter. Herling claims that between 1996 and 1998, she filed "in excess" of 100 EEO complaints, "many of which alleged retaliation, harassment and discrimination on the basis of religion, mental disability, physical disability, sex and national origin." (Exh. G to Herlings Mot. to Recons. At § 25.) Among these complaints was one filed on January 13, 1997 (apparently the last complaint to have been filed

before the termination of Herling's position), which alleged national origin and sex discrimination in Herling's non-selection for a job for which she applied at the USPS. A letter dated March 25, 1997 indicates that Herling's starting time position was "abolished" and that Herling was then reassigned to be "an usassigned regular" employee, who would have to "bid" on job openings as they arose at the USPS (Exh. D to Mot. to Recons.). Herling essentially claims that the abolition of her position was retaliation for past EEO activities.

In order to assert a workplace retaliation claim, a plaintiff needs to allege that she (1) engaged in protected opposition to Title VII discrimination; (2) suffered adverse action subsequent to her protected activity; and (3) that there is a causal connection between the protected activity and the adverse employment action. *Willett v. Dept. of Child and Family Svcs.*, 1998 WL 867406, at *2 (N.D.Ill. Dec. 3, 1998). Defendants argue that "neither the amended complaint nor the administrative claim allege that her reassignment was an adverse employment action or that there is any causal connection between any protected activity and the reassignment." (Mot. to Dismiss Am. Compl. at § 4.) Defendants are incorrect. While Herling does not clearly state that the termination of her position was an adverse employment action, she does not have to do so. It is eminently clear from Herling's complaint and the referenced materials that the termination of her position is the adverse employment action at issue in this case. Secondly, under a generous reading of the complaint and associated materials, Herling has drawn a causal connection between the termination of her position and her EEO activities. Indeed, on her precomplaint for counseling, Herling specifies the EEO activities for which alleges retaliation. Though it is unclear what those specific EEO charges entailed, it appears that her EEO charges over time have alleged sex, national origin, mental disability,

and hostile work environment discrimination. There is no reason to think that she did not allege the same in the two cases she references in her precomplaint for counseling. Herling has sufficiently alleged all three elements of retaliation claim. Defendant's motion to dismiss the retaliation claim is denied.

USPS as Proper Defendant in this Lawsuit

Defendant's argue that Herling's claims against the USPS should be dismissed "because the entity is not a proper defendant under Title VII." (Mot. to Dismiss at § 7.) It is unclear whether the caption on Herling's complaint labels the USPS as a separate defendant or whether Herling is merely indicating that William Henderson is Postmaster General of the USPS. Because it is possible that Herling has named the USPS as a separate defendant, the USPS is now dismissed from this suit as an improper defendant. Suit under Title VII may only be maintained against the Postmaster General. *Ellis v. U. S. Postal Service,* 784 F.2d 835, 838 (7th Cir. 1986).

Motion for Appointment of Counsel

Herling has moved for appointment of counsel. She claims that "[b]ecause of the nature and crucial facts and complexities of her multiple EEO cases and due to the agency's ongoing chaos, it will be more likely for the truth to surface, if plaintiff and defendants were represented by professional counsel. . . . Furthermore, due plaintiff's health and safety and biblical/spiritual religious precautions, she cannot represent or proceed *pro se,* at this time." (Am. Compl. §§ 6-7.)

The decision to appoint counsel lies within the broad discretion of the court. *Jackson v. County of McLean,* 953

F.2d 1070, 1071 (7th Cir. 1992). In exercising its discretion, a court is guided by several factors: (1) the merit of the indigent plaintiff's claims; (2) the plaintiff's ability to investigate crucial facts; (3) whether the nature of the evidence indicates that the truth will more likely be exposed if both sides are represented by counsel; (4) the capability of the indigent litigant to present the case; and (5) the complexity of the legal issues raised. *Maclin v. Freake,* 650 F,2d 885, 887-89 (7th Cir. 1981). "Only when the cases are colorable, the facts may be difficult to assemble, and the law is complex" will judges request an attorney to assist the litigant. *DiAngelo v. Illinois Dept. of Publc Aid,* 891 F.2d 1260, 1262 (7th Cir. 1989). As an additional threshold, the indigent litigant must show that she made "reasonable" efforts to retain private counsel, or that she is effectively precluded from making such efforts. *Jackson,* 953 F.2d at 1072.

In consideration of all these factors, Herling's motion for counsel is denied. Herling appears to have been successful in securing private counsel, but, partly due to her own choice, unsuccessful in keeping them. Herling refuses to retain "deceitful secular attorneys." (Mot. to Recons. § 2.) She successfully retained an attorney but dismissed him after she found that his "loyalty to USPS management officials was very evident." (*Id.* at § 1.) The court is reluctant to appoint counsel when Herling has been so cavalier in her treatment of past counsel.

Furthermore, the *Maclin* factors listed above do not work in Herling's favor. Though Herling appears to have alleged an adequate retaliation claim, the merits of this claim are doubtful. For instance, Herling will have a difficult time showing that the USPS abolished her position because of her past EEO charges, and not because of reorganizational effort. As support for the latter theory, the letter notifying Herling about the abolition of her position appears to be a

form letter. The case file further reveals that attached to the letter is a routing slip indicating that eighteen employees, including Herling, have suffered the same fate: their starting time positions have been abolished, and they have been involuntarily reassigned. Herling will have a difficult time showing that but for her past EEO charges, her position would not have been abolished in any event.

Appointed counsel is not necessary to prosecute this case. The legal issues in this case are neither complex nor intricate, nor is the evidence that might support the allegations of the complaint. *See Rodgers v. Arlington Heights School Dist.*, 2001 WL 474075, at *3 (N.D.Ill. May 1, 2001) (denying plaintiff's motion for counsel though plaintiff alleged sexual harassment, retaliation, and conspiracy to commit workplace discrimination). To be sure, Herling has at times exhibited poor judgment in conducting this suit, and Herling's pleadings occasionally border on the bizarre. Therefore, the court cannot be 100% confident that Herling will competently present her case. Still, the court grants *pro se* plaintiffs considerable latitude in handling their lawsuits, and the same will be the case with Herling. Herling's motion for appoint for counsel is denied.

Conclusion

For the foregoing reasons, defendant's motion to dismiss is granted in part and denied in part. Plaintiff's motion for appointment of counsel is denied.

ENTER:

/s/ JOAN B. GOTTSCHALL
United States District Judge

DATED: July 16, 2001

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Case Number: 00 C 4710 Date: February 7, 2001

Assigned Judge Joan B. Gottschall

Case Title: Annie Herling vs. John Potter, Postmaster General

* * * *

DOCKET ENTRY:

* * * *

(1) ☒ Filed motion of [use listing in "Motion" box above.]

(10) ☒ [Other docket entry]

Plaintiff is granted leave to file amended complaint (13-1). Petition by Plaintiff for leave to proceed informa pauperis (14-1) is granted. Plaintiff filed response to Defendant's motion to dismiss in Chambers. Defendant's reply is due by 3/23/01. Ruling will be by mail.

* * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Case Number: 00 C 4710 Date: November 15, 2000

Assigned Judge Joan B. Gottschall

Case Title: Annie Herling vs. John Potter, Postmaster General

* * * *

DOCKET ENTRY:

* * * *

(10) ☒ [Other docket entry]

Pro se emergency appeal before Judge Gottschall relevant to decision by court on November 1, 2000 is denied. In order for the Court to consider Plaintiff's case she must amend complaint, refile informa pauperis petition and motion for appointment of counsel as explained in open court.

* * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Case Number: 00 C 4710 Date: November 1, 2000

Assigned Judge Joan B. Gottschall

Case Title: Annie Herling vs. John Potter, Postmaster General

* * * *

DOCKET ENTRY:

* * * *

(10) ☒ [Other docket entry]

Motion by Plaintiff to reconsider decision by court on September 8, 2000 is denied.

* * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Case Number: 00 C 4710 Date: October 24, 2000

Assigned Judge Joan B. Gottschall

Case Title: Annie Herling vs. John Potter, Postmaster General

* * * *

DOCKET ENTRY:

* * * *

(10) ☒ [Other docket entry]

This court has no jurisdiction to hear an appeal from an order of the Executive Committee.

* * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Case Number: 00 C 4710 Date: September 8, 2000

Assigned Judge Joan B. Gottschall

Case Title: Annie Herling vs. John Potter,
Postmaster General

* * * *

DOCKET ENTRY:

* * * *

(10) ☒ [Other docket entry]

Plaintiff's "Complaint" fails to contain a description of her claim, but instead appears to be a motion for appointment of counsel. Without a clear statement of the facts which plaintiff believes constitute a cause of action, or any indication of what that cause of action is, the court cannot pass on plaintiff's request to proceed without payment of fees or any request for the appointment of counsel. The court notes, however, that plaintiff is employed and owns real estate so it is difficult to understand why plaintiff cannot pay the court's modest filing fee. The motions for leave to proceed without prepayment of fees (3-1) and for appointment of counsel (4-1) are denied without prejudice.

* * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In the Matter of	)	
	)	Civil Action No.
Annie L. Herling	)	00 C 4914
Plaintiff, *pro se*	)	

ORDER OF THE EXECUTIVE COMMITTEE

The following twenty cases were filed by plaintiff Annie L. Herling, each alleging employment discrimination by the United States Postal Service:

00 C 4710 Herling v. Henderson	(Judge Gottschall)
00 C 4711 Herling v. Henderson	(Judge Castillo)
00 C 4712 Herling v. Henderson	(Judge Kennelly)
00 C 4713 Herling v. Henderson	(Judge Zagel)
00 C 4714 Herling v. Henderson, et al.	(Judge Kennelly)
00 C 4715 Herling v. Henderson,	(Judge Kocoras)
00 C 4716 Herling v. Henderson, et al.	(Judge Kennelly)
00 C 4869 Herling v. Henderson, et al.	(Judge Gottschall)
00 C 4871 Herling v. Henderson, et al.	(Judge Aspen)
00 C 4876 Herling v. Henderson, et al.	(Judge Alesia)
00 C 4877 Herling v. Henderson, et al.	(Judge Shadur)
00 C 4878 Herling v. Henderson, et al.	(Judge Manning)
00 C 4879 Herling v. Henderson, et al.	(Judge Alesia)
00 C 4880 Herling v. Henderson, et al.	(Judge Lindberg)
00 C 4882 Herling v. Henderson, et al.	(Judge Manning)
00 C 4883 Herling v. Henderson, et al.	(Judge Gottschall)

00 C 4884 Herling v. Henderson, et al. (Judge Lindberg)

00 C 4885 Herling v. Henderson, et al. (Judge Marovich)

00 C 4886 Herling v. Henderson, et al. (Judge Alesia)

00 C 4887 Herling v. Henderson, et al. (Judge Hibbler)

This Court has traditionally been very slow to impose restraints on the ability of any party to file a civil case. It is only when a party has repeatedly demonstrated that such restraints may be appropriate that the Executive Committee has been compelled to act.

It is the judgment of the Committee that such a point has been reached by Ms. Herling, and that reasonable and necessary restraints must be imposed on Ms. Herling's ability to file civil cases in this District *pro se*.

The Executive Committee has concluded that Ms. Herling has moved from being a litigant who is simply frivolous to being one who is vexatious. Her filing practices have become a burden the Court will no longer tolerate. Accordingly, the Executive Committee finds that it is necessary and reasonable to place restrictions as outlined below on Ms. Herling's ability to file new cases in this Court *pro se*.

IT IS HERBY ORDERED BY THE EXECUTIVE COMMITTEE in its capacity as the supervisor of the assignment of cases, that the Clerk is directed to close all of the above-listed cases except the original case, no 00 C 4710 Herling v. Henderson.

IT IS FURTHER ORDERED that—

1) Ms. Annie L. Herling, or anyone acting on her behalf, enjoined from filing any new civil action or proceeding or any documents in any of the cases closed by this order in the United States District court for the Northern District of Illinois without first obtaining leave by way of the following procedures:

a) Any materials Ms. Herling, or anyone acting on her behalf, wishes to submit for filing shall be delivered to Room 2050, Office of the Clerk at the Courthouse in Chicago. Only the Clerk or deputies specifically designated by the Clerk may accept such documents.

b) Where the document submitted is a complaint it shall be accompanied by a motion captioned "Motion Seeking Leave to File Pursuant to Order of Executive Committee." That motion shall, in addition to requesting leave to file the complaint, include a sworn statement certifying that the claims raised by or on behalf of Ms. Herling in the complaint are new claims never before raised in any federal court.

c) Whenever Ms. Herling submits a document for filing, the clerk or designated deputy shall accept the papers, stamp them received, docket them, and forward them to the Executive Committee.

2) The Executive Committee will examine any complaints submitted by or on behalf of Ms. Herling to determine whether they should be filed.

3) If Ms. Herling seeks leave to proceed *in forma pauperis*, the Committee will also determine if such leave should be granted. The Committee will deny leave to file any complaints if they are legally frivolous or are merely duplicative of matters already litigated. The Committee may deny leave to file any complaints not filed in conformity with this order.

4) If the Executive Committee enters an order denying leave to file the materials, the clerk shall retain the order and a copy of the materials in the miscel-

laneous file and cause a copy of the order to be mailed to Ms. Herling.

5) If the Executive Committee enters an order granting leave to file the materials, the clerk will cause the materials to be stamped filed as of the date of the order and shall cause the case to be assigned to a judge in accordance with the rules. The clerk shall also cause a copy of the order to be mailed to Ms. Herling.

6) Ms. Herling's failure to comply with this order may, within the discretion of the Executive Committee, result in her being held in contempt of court and punished accordingly.

7) Nothing in this order shall be construed—

   a) to affect Ms. Herling's ability to defend herself in any criminal action,

   b) to deny Ms. Herling access to the federal courts through the filing a petition for a writ of habeas corpus or other extraordinary writ, or

   c) to deny Ms. Herling access to the United States Court of Appeals or the United States Supreme Court.

IT IS FURTHER ORDERED That the Clerk shall cause to be created and maintained a miscellaneous file with the title "In the matter of Annie L. Herling" and case number 00 C 4914. The miscellaneous file shall serve as the repository of this order, all documents proffered for filing by Ms. Herling covered by the terms of this order for which authority to file is not granted, and any order or minute order entered pursuant to this order. The Clerk will also maintain a miscellaneous docket associated with the file. All orders retained in the file will be entered on that docket following standard docketing procedures. A

brief entry will be made on the docket indicating the receipt of any materials from Ms. Herling.

IT IS FURTHER ORDERED That the Clerk shall cause a copy of this order to be mailed to Ms. Herling at P.O. Box 384, Bedford Park, IL 60499-0384, the address given by Ms. Herling in the papers filed in 00 C 4710. Such mailing shall be certified or registered mail, return receipt requested.

ENTER:

FOR THE EXECUTIVE COMMITTEE

/s/_____

Chief Judge

Dated at Chicago, Illinois this 17 day of August, 2000.

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted April 16, 2003
Decided April 28, 2003

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*
Hon. RICHARD A. POSNER, *Circuit Judge*
Hon. ANN CLAIRE WILLIAMS, *Circuit Judge*

No. 03-1496

ANNIE L. HERLING,
Plaintiff-Appellant,
v.

JOHN E. POTTER, Postmaster General,
Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 00 C 4710. Joan B. Gottschall, Judge.

The following are before the court:

1. DEFENDANT-APPELLEE'S MOTION FOR SUMMARY AFFIRMANCE, filed on April 11, 2003, by counsel for the appellee.
2. RESPONSE TO MOTION FOR SUMMARY AFFIRMANCE, filed on April 21, 2003, by the pro se appellant.

This court has carefully reviewed the final order of the district court and the record on appeal. Based on this

review, the court has determined that any issues which could be raised are insubstantial and further briefing would not be helpful to the court's consideration of the issues. *See Mather v. Vill. of Mundelein*, 869 F.2d 356, 357 (7th Cir. 1989) (per curiam) (court can decide case on motions papers and record where briefing would be a waste of time and no member of the panel desires briefing). Accordingly, the district court's order is summarily AFFIRMED.